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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 456

FRED WAYNE ETCHEVERRY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION FOR PERMISSION TO FILE

* * *

PETITION FOR RECONSIDERATION

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PETITION FOR RECONSIDERATION

Your petitioner requests permission to file this "his "consecutive" petition for rehearing, one forbidden by Rule 58(4).

Subsequent to the filing of petitioner's Petition for Rehearing, and very soon after its denial to wit, on January 20, 1964, the United States Court of Appeals for the Second Circuit unanimously held unconstitutional the so-called Supreme Being clause in the Universal Military Training

and Service Act, as amended. *Seeger v. U.S.A.*, No. 28346, 2 Cir., 1964; ..... F.2d .....

Petitioner, in his Petition for Writ of Certiorari, raised this very point.

The trial judge heard petitioner testify. The trial judge read the Selective Service file. The trial judge believed petitioner was a defendant entitled to every consideration:

1. Appeal bail was set at $1.00 when the trial judge learned the bail pending trial was $250.00;

2. In sentencing this defendant the judge stated "I admire you." [this judge has sent over four score religious objectors to war to prison and never before so expressed himself].

3. When this defendant, upon taking the witness stand, informed the clerk he could not swear, nor did he see any reason to affirm, adding "I tell the truth" the trial judge stated "I'll accept your statement as your affirmation."

The Court of Appeals used only three short paragraphs for its opinion. It considered itself bound by its prior decisions. As the argument of Seeger put it, referring to the Etcheverry decision of the Ninth Circuit:

> "The Court blindly follows its own earlier decisions in Clark v. United States, 236 F.2d 13 (9th Cir., 1956), and George v. United States, 196 F.2d 445 (9th Cir., 1952), without any reference to the Torcaso decision or any of the other decisions of the Supreme Court interpreting and defining the meaning of the 'establishment' and 'free exercise' clauses of the First Amendment. Appellant submits that the Etcheverry case has been wrongly decided, and should not be followed, even assuming it to be analogous here on its facts."

Your petitioner is informed and believes that the government intends to petition this Court for a Writ of Certiorari in the Seeger case. Your petitioner believes justice will be served by permitting his fate to be held in abeyance until a decision by this Court resolves the problem shared.

WHEREFORE, it is asked of the Court that

(1) petitioner be permitted to file this, his Petition for Reconsideration; that

(2) the Order include a recall of the judgment, and that

(3) the Court below be so notified.

Respectfully,

J. B. TIETZ,
Attorney for Petitioner

January 23, 1964

CERTIFICATE OF COUNSEL

This Petition for Reconsideration is filed in good faith and not for the purpose of delay.

J. B. TIETZ,
Attorney for Petitioner